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# Charles Walter Rushton v. Sage Land Co. : Brief of Respondent

Utah Supreme Court

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Robert M. McRae; Robert J. Haws; Attorneys for Plaintiff-Appellant;

Roger A. Livingston; Attorney for Defendant-Respondent;

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IN THE SUPREME COURT OF THE STATE OF UTAH

-----  
CHARLES WALTER RUSHTON, )

Plaintiff-Appellant, )

vs. )

Case No. 15295

SAGE LAND COMPANY, )

Defendant-Respondent. )  
-----

BRIEF OF RESPONDENT

-----  
Appeal from the Granting of Defendant's Motion for Summary Judgment,  
in the District Court of Uintah County, State of Utah,  
The Honorable J. Robert Bullock, Judge, Presiding  
-----

ROGER A. LIVINGSTON  
530 East 500 South  
Salt Lake City, Utah 84102  
533-9600  
Attorney for Defendant-Respondent

ROBERT M. McRAE  
ROBERT J. HAWS  
370 East 500 South  
Salt Lake City, Utah 84111  
364-6474  
Attorneys for Plaintiff-Appellant

FILED

DEC -5 1977

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Clerk, Supreme Court, Utah

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ROGER A. LIVINGSTON  
530 East 500 South  
Salt Lake City, Utah 84102  
533-9600  
Attorney for Defendant-Respondent

ROBERT M. MCRAE  
ROBERT J. HAWS  
370 East 500 South  
Salt Lake City, Utah 84111  
364-6474  
Attorneys for Plaintiff-Appellant

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IN THE SUPREME COURT OF THE STATE OF UTAH

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Plaintiff-Appellant,	)	
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Defendant-Respondent.	)	

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BRIEF OF RESPONDENT

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STATEMENT OF THE NATURE OF THE CASE

Defendant-Respondent, as grantee under a Tax Deed, is the record owner of certain real property situated in Uintah County, State of Utah, described as follows:

"All of the E1/2 Block 4, Plat "A" MOFFAT TOWNSITE, except the Northwest one sq. rod".

Plaintiff-Appellant, the delinquent tax payer and former record owner, filed this action seeking termination of Respondent's interest and restoration of Appellant's in the subject real property. Respondent counterclaimed seeking to quiet title against Plaintiff-Appellant.

DISPOSITION IN THE LOWER COURT

The Honorable J. Robert Bullock granted Defendant-Respondent's Motion for Summary Judgment, dismissing Appellant's Complaint and

quieting title in Respondent's favor against Appellant.

### RELIEF SOUGHT ON APPEAL

Respondent seeks affirmance of the Summary Judgment rendered below.

### STATEMENT OF THE FACTS

On June 16, 1976, at Pretrial Conference before the Honorable J. Robert Bullock, Judge of the District Court in and for Uintah County, counsel for each of the parties stipulated to the material facts of the case. In that there remained no material issue of fact to be decided, it was further agreed between counsel and approved by the Court that the matter could be decided on motion for summary judgment. Thereafter, opposing motions for summary judgment were made by each of the parties, and oral arguments on said motions were held on August 27, 1976, before the Honorable J. Robert Bullock. On June 16, 1976, and again on August 27, 1976, counsel for each of the parties stipulated and agreed to the following facts:

1. That Defendant-Respondent is the record owner of the subject real property situated in Uintah County, State of Utah, having purchased the property at a tax sale and being the grantee under a Tax Deed from Uintah County.

2. That the "May Sale" at which Defendant-Respondent purchased the subject property was held on May 23, 1973, and that said "May Sale" under which Defendant-Respondent claims ownership

to the subject property was regularly held and held in conformity with all applicable law.

3. That the said "May Sale" under which Defendant claims ownership to the subject property complied in all respects with applicable law, and Plaintiff raised no objection whatsoever to the procedural conformity of said "May Sale".

4. That Plaintiff was the prior record owner of said property but was delinquent in the payment of his property taxes.

5. The property was sold in a preliminary sale to Uintah County in 1968 for nonpayment of taxes.

6. That plaintiff did not redeem the property prior to or on April 1, 1973, and, therefore, lost his right of redemption pursuant to Section 59-10-56 (1974).

7. That a check from Plaintiff dated May 21, 1973, made payable to "Uintah County Clerk", was not delivered to Uintah County prior to April 1, 1973, but was received by Uintah County sometime after May 21, 1973, and prior to the valid "May Sale" on May 23, 1973.

8. That Plaintiff did not appear at, participate at, bid at, or in any other manner or respect participate in the valid "May Sale".

#### ARGUMENT

POINT I: EXPIRATION OF PLAINTIFF'S REDEMPTION RIGHTS UNDER UTAH CODE ANNOTATED §59-10-56 (AMENDED 1974), WHILE NOT DIVESTING PLAINTIFF OF ALL INTEREST DOES TERMINATE PLAINTIFF'S RIGHT OF REDEMPTION.

Where the annual taxes on real property, and any penalties, remain unpaid as of January 15th of the following year, the delinquent properties are "deemed to have been sold to the County at a preliminary sale to pay the taxes, penalty, and cost for which such real estate is liable" (Utah Code Annotated §59-10-33, as amended). This preliminary sale is nothing more than a paper-worked evolution, and the interest acquired by the County at this preliminary sale is not an absolute title, rather it is an equity which may ripen into an absolute title. The interest of the County is subject to redemption by the legal owner or any other party having an interest in the land during the period ". . . prior to the first day of April next following the lapse of four years from the date of the preliminary sale. . ." (Utah Code Annotated §59-10-56, as amended).

The delinquent tax payer's right of redemption is a redemption from the County during the period of time from the preliminary sale until April 1st four years from the date of the preliminary sale. Thus, the redemption right of Plaintiff lapsed and terminated absolutely on April 1, 1973. Plaintiff's right of redemption continued only until April 1, 1973, and Plaintiff had no right to redeem the property from the Court after that date.

Appellant, in citing Salt Lake Home Builders, Inc. v. Colman, 30 Ut. 2d 379, 518 P.2d 165 (1974), correctly notes that the expiration of the prescribed period for redemption, without more, does not totally divest a citizen of his ownership of real property; however, Appellant incorrectly reads Salt Lake Home Builders



Inc., supra, to mean that the period for redemption is extended up until the time of the "May Sale". The 1939 Amendments added a final sentence to the section now appearing as the first paragraph of Section 59-10-56 which contains a prohibition against redemptions after the first day of April in the year involved. That prohibition, however, must be read in light of the following provisions for a sale in the month of May and has as its obvious purpose the preserving in tact of the tax sale record for an interval so that the advertising can be conducted and sale preparations made. The law is clear and unequivocal, there is a prohibition against redemption after April first in the year involved.

The Salt Lake Home Builders, Inc., supra, case makes clear that "the fee owner (Plaintiff) does continue to have some interest in his property and a method of restoring full ownership to himself." (Emphasis added). The Salt Lake Home Builders, Inc., case goes on to explain that the method by which ownership is restored is through successful purchasing at the "May Sale" by virtue of the delinquent owner's "better standing". In no way, however, does that case purport to extend the period of redemption beyond April 1st as defined by statute.

Under applicable Utah law, and as defined and interpreted in Salt Lake Home Builders, Inc., supra, and a preceding line of cases, it is clear that Plaintiff's right of redemption continued only until April 1, 1973. As of April 1st, Plaintiff had no right whatsoever to redeem the property from the County, notwithstanding

the fact that he did continue to have some interest in the subject property.

POINT II: PLAINTIFF'S INTEREST IN THE SUBJECT PROPERTY AFTER EXPIRATION OF HIS PERIOD OF REDEMPTION WAS HIS "BETTER STANDING THAN ANY OTHER PURCHASER AT THE MAY SALE", WHICH STANDING PLAINTIFF FAILED TO EXERCISE.

In explaining the interest which the delinquent owner retained in his property following the expiration of the redemption period the Court in Salt Lake Home Builders, Inc., supra, stated that ". . . the fee owner (Plaintiff) does continue to have some interest in his property and a method of restoring full ownership to himself" (supra at 381). In explaining this method the Court goes on to state that, "If the owner were divested of all interest in his property, and it was completely vested in the Court, the owner would have no better standing than any other purchaser at the May Sale. But such is not the fact." (supra at 381). Thus, the interest and method of restoring is the preferential or better standing that the Plaintiff is entitled to at the "May Sale". The Court goes on in explaining the better standing which the purchaser has as follows:

"With respect to the May Sale, Section 59-10-64 provides in substance that the property shall be sold to the bidder who will pay the full amount of the taxes, penalties, interest and costs for the smallest portion of the entire parcel; and that if it is sold for a portion, the remaining part of the property 'shall be deemed to have been redeemed by the owner thereof.' It is plain to be seen that if the owner is willing to pay the amount due the county at the May Sale, he can be restored to his ownership, or in effect, 'redeem'"

his property. He is free to continue to bid that amount for a smaller and smaller fraction of the property than any other purchaser, because he will get both that fraction, and also all that is left of the property, for that amount." (Emphasis added).

It is clear from the above language that Salt Lake Home Builders, Inc. does not purport to extend the period of redemption, but merely that "in effect" the owner redeems his property by successfully participating in the May Sale, and the Court explains that by virtue of Section 59-10-64 which provides for sale to the bidder who is willing to pay the taxes for the smallest portion of the entire parcel, that the successful purchaser will inevitably be the property owner so long as the property owner merely participates at the "May Sale". Again, this is merely "in effect" redeeming the property, and the Court is in nowise extending the statutory period of redemption which earlier terminated on April 1st.

POINT III: ONCE THE FOUR-YEAR PERIOD OF REDEMPTION HAD EXPIRED, PLAINTIFF COULD HAVE BEEN RESTORED TO HIS OWNERSHIP ONLY BY SUCCESSFULLY PURCHASING AT THE MAY SALE, WHICH PLAINTIFF FAILED TO DO.

By Plaintiff's own admission and stipulation as to the facts, Plaintiff failed to redeem within the statutorily-allowed four year period, and his right of redemption expired and terminated April 1, 1973. Plaintiff-Appellant is grasping for a judicial extension of the redemption period set by statute by attempting to misconstrue the language of Salt Lake Home Builders, Inc., supra. That case involved an "invalid May Sale", whereas the case at bar involves an

admittedly valid and procedurally correct "May Sale". In Salt Lake Home Builders, Inc., this Court explained that the property owner is not totally divested of any interest by virtue of the expiration of the right of redemption, as explained above, but this Court did not judicially extend the redemption period.

Again, by Plaintiff's own admission, Plaintiff did not appear at, bid at, or participate in any way at the "May Sale". Upon Plaintiff's failure to redeem by April 1st, the County was under a statutory duty to proceed with the "May Sale", and to offer the property for sale at public auction. Section 59-10-64 of Utah Code Annotated sets forth that the property should be sold at public auction to the ". . . highest bidder for cash . . . ." (Emphasis added). Clearly, Plaintiff's check dated May 21, 1973, cannot be construed to have been a bid at the "May Sale", and in fact Appellant does not even contend to be the successful purchaser at the "May Sale", but simply relies upon a purported judicial extension of the redemption period. It is clear under Salt Lake Home Builders, Inc., supra, and applicable to statutory provisions, that Plaintiff could have successfully "reclaimed" his ownership of the subject property by successfully bidding and purchasing at the "May Sale". This Plaintiff failed to do.

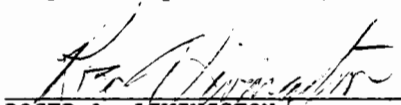
Parenthetically, Respondent wishes to comment on certain allegations set forth in the concluding paragraph in the Argument of Appellant's Brief. Therein Appellant makes allegations relating to Defendant's lack of investment in the subject property and

plaintiff's payment of real property taxes for other years. None of these allegations were made in the Court below, and are inappropriate to be asserted on appeal. Further, Defendant contests the accuracy of each of those statements, although the allegations are not relevant to the issue before the Court.

CONCLUSION

Appellant failed to redeem during the four-year statutory redemption period, and further Appellant failed to exercise his better standing through participation at the "May Sale". The judgment and decree of the Trial Court was, therefore, correct and should be affirmed.

Respectfully submitted,



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ROGER A. LIVINGSTON  
530 East 500 South  
Salt Lake City, Utah 84102  
Attorney for Defendant-Respondent

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing Brief of Respondent, postage prepaid, to Robert M. McRae and Robert J. Haws, attorneys for Plaintiff-Appellant, at 370 East 500 South, Salt Lake City, Utah 84111, on this 5th day of December, 1977.